IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7420 OF 2006.

Radhakrishna Arondekar. .. Petitioner.

Vs.

Arjun Sadashiv Sonavane. Respondent.

Mr.Anil L. Desai, Advocate for Petitioner.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:17TH NOVEMBER, 2006.

P.C.:-

1. Heard.

2. The petitioner challenges the concurrent finding arrived at by the Courts below regarding acquisition of alternative suitable premises by the petitioner. The contention of the petitioner is that that finding is contrary to the materials on record and it has not been admitted by the petitioner that he has acquired alternative suitable premises. The courts below also failed to take into consideration the fact that the respondent had failed to establish that the alternative premises, alleged to have been acquired by the petitioner, were suitable

accommodation for the petitioner. It was specific case of the petitioner that the premises have been acquired by his son out of his income who was engaged in the business of selling newspapers.

3. Both the Courts below have arrived at concurrent findings that it is not in dispute that the alternative accommodation has been acquired. It was a specific case of the petitioner that the premises have been acquired by his son. The evidence on record discloses that the petitioner is in occupation of the said premises. The petitioner has not produced any documentary evidence even to suggest that the acquired premises have been purchased by his son. Undisputedly, the acquired premises have been acquired on ownership basis. Only document which has been produced on record is a ration card. No such document can disclose as to whether the premises have been acquired by the person whose name appears in the ration card. The ownership of the premises has to be established by producing appropriate document of title in that regard. The burden in that regard was essentially upon the petitioner on account of undisputed fact that the premises have been

acquired and they are found in occupation of the petitioner.

4. As regards the point of suitability, undoubtedly, initial burden lies upon the landlord. The same can be discharged by leading specific evidence by the landlord himself or even relying upon the evidence produced by the tenant. In the case in hand, the evidence produced by the petitioner himself, as is revealed from the analysis drawn by the Trial Court in its judgment, discloses that the acquired premises comprised of ground floor and first floor. The first floor is bigger than the ground floor premises. It also discloses area of the acquired premises. Undoubtedly, the said area is much more than the area of the premises let out to the petitioner. This is also reflected from the said judgment of the trial Court and there is no challenge to the said finding. Being so, the burden in that regard was duly discharged by the landlord. The Courts below having considered entire materials on record in proper perspective, no fault can be found with the concurrent finding arrived at by the Courts below with regard to suitability of accommodation which has been acquired by the

petitioner.

5. Attention was sought to be drawn to the decisions in the matters of

1. Dhruvakumar Haribhau Gujrathi Vs. Dattatraya Shankar Chikhlikar 2005(4) ALL MR 103

2.Pramila Madhav Damle & others Vs. Shri.Waman R. Koparde 1999(2) Bom.C.R. 371.

3.Shankarrao Dattatraya Kalyankar Vs. Vishwasrao Dadasaheb Patil 1999(1) Bom.C.R. 161

4.Dulanbi Mirasaheb Belgaonkar Vs. Annappa Kurka Devadiga 2002(1) Mh.L.J.507

5.Ganpat Ram Sharma Vs. G;ayatri Devi A.I.R. 1987 S.C. 2016.

6. Anandi D. Jadhav Vs. Nirmala Ramchandra Kore A.I.R 2000 SC 1386

7.Mrs.Saharadbegum Sikandar Shaikh and another Vs. Abdul Ali Mawaji Tejani and another 1991 (2) Bom.C.R.455.

6. The decision in the case **Dhruvakumar Haribhau Gujarathi Vs. Dattatraya Shankar Chikhlikar is** in relation to Demand Notice and on the point of rebuttal of presumption regarding service of notice. The proceedings in question are on account of acquisition of

alternative suitable accommodation by the tenant. A suit for eviction of such a nature need not be preceded by any notice, and, therefore, the said decision has no applicability to the case in hand.

7. In **Pramila Madhav Damle's** case the evidence on record discloses acquisition of alternative accommodation by the wife of a tenant. It was held that the Court below had wrongly applied the ratio in the case of **B.R.Mehta Vs. Atma Devi and others (1987 4 S.C.C. 183),** while holding that acquisition of the flat by the wife of the tenant out of her own funds comes within the scope of Section 13(1)(l) of the Bombay Rent Act. Obviously, this has no application to the facts in the case in hand.

8. In **Shankarrao Dattatraya Kalyankar's** case,it was held that the cause of action to the landlord for the suit on the ground of acquisition of suitable accommodation by the tenant should precede the date of filing of the suit. Undisputedly, no such issue has arises in the matter in hand, nor it was raised at any point of time. Being so , the decision is of no

help to the petitioner in the case in hand.

9. In **Dulanbi Mirasaheb's** case it was held that to attract the provisions comprised under Section 13(1)(l) to the Rent Act, it is necessary for the land-lord to establish that the tenant has acquired some other suitable residence. In the case in hand, both the Courts below have arrived at concurrent finding on the basis of the materials on record and one fails to understand how this decision is of any help to the petitioner.

10. Similar is the decision of the Apex Court **in Ganpat Ram Sharma's case.**

11. The Apex Court **in Anandi D. Jadhav's** case has held that expression 'acquired vacant possession' means an acquisition of vacant possession of a suitable accommodation in which one has a right to reside. It must be a legally enforceable right. It is nobody's case in the matter in hand, that the petitioner has no right to reside in the acquired premises. Being so, the decision in **Anandi's** case is also of no help to the petitioner.

12. In **Mrs. Saharabegum Sikandar Shaikh's** case the learned Single Judge of this Court had held that acquisition of the premises were for the son and not for the tenant and therefore hardship factor had to be answered in favour of the tenant. It was not the case established in the matter in hand, that the premises were essentially purchased for the benefit of the son and it was for his exclusive use and the petitioner was not supposed to occupy the same. Being so, this decision is also of no help to the petitioner.

13. For the reason stated above, therefore, there is no case for interference in the impugned judgment. The impugned judgment does not disclose any jurisdictional error. Hence, the petition fails and is rejected.

14. At the request of the learned Advocate for the Petitioner time to vacate the suit premises is extended till 31st March,2007 subject to the petitioner and all the major members of the family of the petitioner filing undertaking to the effect that they will not induct any third party in the suit premises nor will create any third party interest therein and

will deliver vacant peaceful possession of the suit premises to the respondent land-lord on or before 31st March, 2007. The undertakings to be filed within two weeks from today.

[R.M.S.KHANDEPARKAR,J.]